

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE CITY OF BLAINE, *et al.*,

Plaintiffs,

v.

GOLDER ASSOCIATES, INC., *et al.*,

Defendants.

No. C03-0813L

ORDER GRANTING PLAINTIFFS'
MOTION IN LIMINE REGARDING
REFUSAL TO PAY LUMMI TO
MONITOR CONSTRUCTION AS TO
CONTRACT CLAIM ONLY

This matter comes before the Court on "Plaintiffs' Motion in Limine Regarding the Decision not to Pay the Lummi to Observe the Work of Golder and its Employee Gordon Tucker (as it Pertains to the Contract Claims Only)." Dkt. # 206. Plaintiffs seek to preclude defendants from presenting any evidence or arguments tending to show that the City of Blaine's damages in this case were caused not by defendants' breach of the Memorandum of Agreement, but rather by the City's refusal to pay the Lummi Nation to monitor the construction activities at the Semiahmoo site. Defendants assert that plaintiffs' motion in limine is improper because it seeks to exclude arguments, not specific evidence (citing Fenimore v. Donald M. Drake Constr. Co., 87 Wn.2d 85, 91 (1976)) and that the jury could reasonably conclude that the City's decision not to pay the Lummi to monitor the excavation was the proximate cause of the damages claimed in this suit.

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LIMINE REGARDING REFUSAL TO PAY
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1 For the reasons stated in this Court's "Order Granting Plaintiffs' Motion in Limine
2 Regarding Mitigation of Damages After August 5, 1999," of even date, the Court finds that
3 plaintiffs' motion is a proper request to exclude from trial all evidence and argument regarding
4 an invalid defense.

5 The City's decision not to pay the Lummi to monitor the construction activities
6 pre-dated defendants' agreement to perform archaeological monitoring during the excavation
7 process. The fact that the City could have avoided the losses at issue in this litigation by making
8 different pre-contract decisions (such as hiring a different archaeological firm or hiring three
9 firms to provide duplicative services) does not excuse Golder's failure to comply with the terms
10 of its contract and are simply too remote to be considered the legal cause of plaintiffs' contract-
11 related damages. Because plaintiffs' motion is based on the argument that evidence related to
12 the City's failure to pay the Lummi is irrelevant to its contract claim, the motion is GRANTED.¹

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14 DATED this 20th day of September, 2005.

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17 Robert S. Lasnik
18 United States District Judge
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22 ¹ Plaintiffs have not challenged the admissibility of this same evidence as it relates to the hold
23 harmless provision of the Memorandum of Agreement. The Court notes, without deciding, that it
24 appears that the City's decision to proceed with the excavation without a Lummi representative present
25 may be relevant to the contributory negligence issue raised by the hold harmless provision. See "Order
Denying Plaintiffs' Motion in Limine Regarding Alleged Acts of Negligence on the Part of the City of
Blaine," of even date.